the land of an adjoining owner without an easement to do so violates that owner's right of property without regard to the question of negligence. The liberal rule is not quite consistent with this theory. The fears of the New Hampshire court, *Garland* v. *Towne, supra,* that the enforcement of the strict rule would prevent the growth of cities does not seem justified in view of the small amount of litigation on this question.

WATERS—RIGHT OF RIPARIAN OWNERS TO DIVERT WATER.—Plaintiff and defendant are opposite riparian proprietors, each owning to the center of the stream. As a defense to an action to condemn its water rights defendant contends that it can develop water power by erecting a wing dam in its half of the river. *Held,* in awarding a new trial that the diversion of one-half the stream by such a wing dam would violate plaintiff's right to have the stream flow by its land in undiminished volume. *Blue Ridge Interurban Ry. Co.* v. *Hendersonville Light & Power Co.* (N. C. 1915), 86 S. E. 296.

The water rights of opposite riparian owners or occupiers arise by operation of law from the ownership or occupation of the banks, and the extent of the rights is not dependent on title to the bed of the stream. *Pratt* v. *Lamson,* 84 Mass. 275, 285; *Lyon* v. *Fishmongers Co.,* L. R. 1 App. Cas. 662, 673, 683; *Diedrich* v. *Northwestern Union Ry. Co.,* 42 Wis. 248, 261; but see *Wilson* v. *Harrisburg,* 109 Me. 207. Such rights do not give title to the water or any portion of it, but give each owner the usufruct of the whole stream flowing undivided and indivisible. *Webb* v. *Portland Mfg. Co.,* 3 Sumner 189, 198 *et seq; Blanchard* v. *Baker,* 8 Me. 253. The stream cannot be severed into parts for its use. *Plumleigh* v. *Dawson,* 6 Ill. 550; *Vanderbergh* v. *Van Bergen,* 13 Johns. 212. Such an owner is under an obligation not to interfere with the flow of the stream in any material way. 3 KENT, COMM. 439 *et seq.* The general rule governing the use of water for extraordinary purposes by riparian owners is that such use must be reasonable and not an interference with the rights of other riparian proprietors. *White* v. *East Lake Land Co.,* 96 Ga. 415; *Gahlen* v. *Knord,* 101 Iowa 700; *Elliot* v. *Fitchburg R. R. Co.,* 64 Mass. 191; *Garwood* v. *N. Y. Cent. & Hud. R. R. R. Co.,* 83 N. Y. 400; *Tennessee Coal, Iron, & R. R. Co.* v. *Hamilton,* 100 Ala. 252. In the principal case one opinion considers it a question for the jury whether the diversion caused by a wing dam would be an unreasonable use of riparian rights. It is the general rule that it is a question of fact for the jury whether a given exercise of riparian rights is reasonable. *Batavia Mfg. Co.* v. *Newton Wagon Co.,* 91 Ill. 230; *Lowrie* v. *Silsby,* 76 Vt. 240; *Snow* v. *Parsons,* 28 Vt. 459; *Pool* v. *Lewis,* 41 Ga. 162; *Hetrich* v. *Deachler,* 6 Pa. St. 32. In certain cases, however, if a use is clearly excessive or clearly outside riparian rights it may be declared unreasonable as a matter of law. *Salem Mills* v. *Lord,* 42 Ore. 82; *Higgins* v. *Flemington Water Co.,* 36 N. J. Eq. 538. This seems to be the theory of the majority opinion in the principal case.

WILLS—REVOCATION BY MARRIAGE.—Where a man made a will subsequent to a separation agreement between himself and his wife, and a few months later, after a decree of divorce had been granted, the same parties by mutual

consent again began to cohabit together, *held,* that such mutual consent followed by cohabitation as husband and wife was a common-law marriage and operated as a revocation of the will under § 7072 COLO. REV. ST. 1908.—*In re Matteote's Estate* (Colo. 1915), 151 Pac. 448.

§ 7072 COLO. REV. ST. 1908 provides for the revocation of a will by the subsequent re-marriage of the testator. This statute accords with the statutes of several other states. KENTUCKY STATUTES, 1909, § 4832; MASSACHUSETTS REV. LAWS (1902), c. 135, § 9 (unless it appears that the will was made in contemplation of marriage); NORTH CAROLINA—*Davis* v. *King,* 89 N. C. 441, quoting BATTLE'S REVISED CODE, c. 119, § 42; RHODE ISLAND REV. LAWS (1909), c. 254, § 76; VIRGINIA CODE (1887), § 2517; WEST VIRGINIA ANN. CODE (1906), c. 77, § 3138. All of these statutes differ from that of Colorado in this, only,—that they do not apply to wills made in the exercise of a collateral power of appointment. These statutes are undoubtedly in derogation of the common law, because marriage alone at common law did not revoke a will, but the marriage must have been accomplished by birth of issue. *Overbury* v. *Overbury, 2* Shaw. 242, as to revocation of will of personalty by birth of issue: *Christopher* v. *Christopher, 2* Dickens 445, Abbott 365, as to revocation of will devising land, by birth of issue. The subsequent marriage which in the principal case operated as a revocation of the will has no validity except as a common-law marriage. That mutual consent followed by cohabitation coupled with a continuous and mutual acknowledgement of the married relation makes a valid common-law marriage, see *Klipfel's Estate* v. *Klipfel,* 41 Colo. 40, 92 Pac. 26, 124 Am. St. Rep. 96. Here, then we have a statute in derogation of the common law including within its operation a marriage which gains its validity only through recognized principles of common law. No similar decision under a similar statute has been found, but the holding of the court would seem to be correct in those states which combine a statute similar to the one in Colorado and a recognition of a common law marriage as a valid marriage.

WORKMEN'S COMPENSATION ACT — CONTRACTUAL ASSUMPTION OF RISK. — Plaintiff's husband was employed by defendant, his duty being to make repairs on electrical apparatus. He climbed a pole to replace a defective insulator; some of the wires attached to this pole carried heavy voltage, and it was customary for employees to have the current shut off while the apparatus was being repaired. In this case no such direction was given, and plaintiff's husband was killed when he accidentally touched a wire. The Workmen's Compensation Act provides that in an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained it shall not be a defense that the employee had assumed the risk of the injury. *Held,* that the statute relates merely to defense of voluntary assumption of risk and not to contractual assumption, and therefore the defense of contractual assumption of risk by employee was open to the defendant. *Ashton* v. *Boston & M. R. Ry. Co.* (Mass. 1915), 109 N. E. 820.